

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL ACTION NO. 5:19-CV-00101-KDB-DCK**

**BRIAN BLACKBURN and  
CANDY KIZIAH,**

**Plaintiffs,**

v.

**CATAWBA COUNTY, NORTH  
CAROLINA, et al.,**

**Defendants.**

**ORDER**

**THIS MATTER** is before the Court following Plaintiffs' *pro se* Response to the Motion to Dismiss by Burford A. Cherry. (Doc. No. 33).

In their response to the pending motion to dismiss, Plaintiffs wrote the following:

. . . Plaintiffs contend that with the nationwide pandemic, the loss of Plaintiff Kiziah's mother recently, that the events are so overwhelmingly out of their control—that their priorities in life must be firstly in maintaining the Supreme Court's protected stance of them raising their recently returned daughter as fit parents, and abiding by the state-mandated "social distancing" as well as caring for their household's basic needs. Therefore, Plaintiffs gracefully and somberly agree to a dismissal of the case based on these reasons alone.

. . .

Plaintiffs plead of the Court to gracefully dismiss the case before it, disposing of the case not in accordance with the Defendant's Motion to Dismiss, but pursuant to natural causes which prohibit the fullest attentions of the Plaintiffs as *pro se* litigants to the serious issues before the Court.

(Doc. No. 33, at II.B, III.A) (emphasis in original).

Federal Rule of Civil Procedure 41 provides that a plaintiff may dismiss an action without a court order by filing (1) "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment," or (2) "a stipulation of dismissal signed by all parties who

have appeared.” Fed. R. Civ. P. 41(a)(1)(A). Rule 41 further provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” *Id.* 41(a)(2).

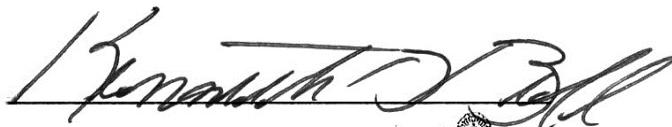
The Court will provide the Plaintiffs with 14 days from the filing of this order to submit a stipulation of dismissal signed by all parties who have appeared in the action. If Plaintiffs wish to continue with the action, they should notify the Court within 14 days of the filing of this order. If Plaintiffs do not submit a stipulation of dismissal signed by all parties who have appeared in the action and do not otherwise indicate to the Court that they wish to proceed with this case, the Court will dismiss the case without prejudice pursuant to Rule 41(a)(2).

**IT IS THEREFORE ORDERED** that:

- (1) Plaintiffs shall file a stipulation of dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1)(A)(ii) or otherwise inform the Court they wish to proceed with the action within 14 days of the filing of this order; and
- (2) if no stipulation is filed and Plaintiffs do not indicate they wish to proceed within 14 days of the filing of this order, the Court will dismiss the action without prejudice under Rule 41(a)(2).

**SO ORDERED.**

Signed: July 15, 2020



Kenneth D. Bell  
United States District Judge

